



TOWN OF WAYNESVILLE Zoning Board of Adjustment

9 South Main Street
Waynesville, NC 28786
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Stephanie Strickland
Henry Kidder
Joshua Morgan
Neil Ensley - Chairman
David Felmet – Vice Chairman
Charles John Gisler

Development Services
Director
Elizabeth Teague

TOWN OF WAYNESVILLE ZONING BOARD OF ADJUSTMENT REGULAR MEETING

Town Hall – 9 South Main Street, Waynesville, NC 28786

Tuesday, September 6, 2016, 5:30 PM

A. CALL TO ORDER

1. Welcome/Calendar/Announcements
2. Adoption of Minutes

Motion: *To approve the minutes of May 18, 2016 special called meeting as presented (or as corrected).*

B. ADJOURN

The next regular meeting is scheduled for October 4, 2016.



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Stephanie Strickland
Henry Kidder
Jack Suddath
Neal Ensley (Chairman)
David Felmet (Vice Chairman)
Charles John Gisler

Development Services
Director
Elizabeth Teague

Special Called Meeting
Town Hall, 9 South Main Street, Waynesville, NC 28786
Wednesday, May 18, 2016, 5:30 pm

The WAYNESVILLE ZONING BOARD OF ADJUSTMENT held a special called meeting on Wednesday, May 18, 2016 at 5:30 pm in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

1. Welcome/Calendar/Announcements

Mr. Neal Ensley, Chairman, welcomed everyone and called the meeting to order at 5:30 pm.

The following members were present:

Chairman Neal Ensley
Stephanie Strickland
Henry Kidder
John Gisler
Jack Suddath

Absent:

Vice Chairman David Felmet

The following staff members were present:

Elizabeth Teague, Development Services Director
Ron Sneed, Attorney to the Board
Amie Owens, Town Clerk
Byron Hickox, Land Use Administrator
David Kelley, Code Enforcement Official
Kevin Teater, Development Services Intern

Zoning Board of Adjustment Minutes
Special Called Meeting
May 18, 2016

2. Adoption of Minutes from the April 5, 2016 Meeting

Board Member Henry Kidder made a motion, seconded by Board Member Stephanie Strickland, to approve the minutes of the April 5, 2016 meeting as presented. The motion passed unanimously.

B. BUSINESS ITEMS

Chairman Ensley introduced the two issues which would be discussed – 1) a variance request to Chapter 13.5.2.C Nonconforming Uses and Structures, Discontinuance of one year, at 196 East Street, PIN 8615-46-1571 and 2) a variance request to Chapter 2.4.2 (4e), Rear Setback, at 1570 South Main Street, PIN 8605-80-9608. As the proceedings were quasi-judicial in nature, he conducted the necessary procedural readings and those who would be providing testimony in both of the issues were sworn in at 5:40 p.m.

Chairman Ensley polled the members to see if there were any ethical considerations or conflicts of interest that should be disclosed prior to beginning the first hearing. There being none, Chairman Ensley **opened the first hearing at 5:42 p.m.**

1. Variance request to Chapter 13.5.2.C Nonconforming Uses and Structures, Discontinuance of one year, at 196 East Street, PIN 8615-46-1571

Elizabeth Teague, Development Services Director, began by entering into evidence documents that were pertinent to both public hearings: the notice that was sent out to adjacent property owners and the notice of public hearing which was published in the newspaper.

Byron Hickox, Land Use Administrator, provided information from the staff report noting the property consists of 0.685 acres that front East Street with 7 residential units that were currently occupied and one additional unit that was formerly used as a residential unit but had been used for storage for a period of more than one year. The new owner, Austin Lee, would like to return this to use as a residential unit. Mr. Hickox continued by noting that based on the property size and the existing Land Development Standards, maximum residential density in the Pigeon Street Neighborhood District (PS-NR) for this lot is limited to six (6) units; based on 10 units per acre. The two units that exceeded the maximum density were considered legal nonconforming (grandfathered) uses; however, one of the units has been used for storage for a period greater than one year. The property owner, Mr. Lee, is requesting a variance to allow the reestablishment of the 8th unit for residential use.

Mr. Hickox entered into evidence a letter from the previous owners Shirley and Wayne Finger requesting that Mr. Lee not be punished for their mistake/misunderstanding about the use of the unit.

Board Member Henry Kidder questioned if this was a new development starting today, what would the maximum density be. Ms. Teague answered that it would not have the same density as the existing units had been grandfathered in.

Mr. Austin Lee, new owner of the property provided a historical account of the transaction including his impression that the building was conforming and had been rented as 8 units. He noted that this would create a hardship for him if the 8th unit was not available for rental. Mr. Lee explained that there would be no additional parking or square footage required for this change in use and that the unit has been inspected and found to be in compliance with current building codes. He indicated that he is planning to clean up the area around the buildings and his efforts are providing affordable housing within town.

Board Member Kidder asked Mr. Lee when he bought the property. Mr. Lee answered May 13, 2016. He noted that he found out the property was nonconforming on May 11, 2016 but did not want to back out of the sale at such a late date. Mr. Lee reiterated that the house and seven rental units have always had power, water and working facilities and has passed the necessary building inspections.

Chairman Ensley asked if anyone else in the audience wished to present information. He called on the previous owner Wayne Finger. Mr. Finger explained that when he and his wife purchased the property in the 1990s, all of the units were used for apartments. Mr. Finger required a place to store his tools and used one unit for that purpose and never rented it as an apartment.

Chairman Ensley asked if anyone wished to speak against the variance. No one addressed the board.

Board Member Kidder asked staff if the same zoning was in place in 1998 as today. Mr. Hickox noted that the zoning was not the same as in 1998 and had been updated in 2003 and again in 2011. Board Member Kidder clarified that the unit had not been rented in over 10 years. Mr. Hickox confirmed.

Chairman Ensley **closed the hearing at 5:58 p.m.** without the entirety of the staff report presented.

Attorney Ron Sneed reminded members that as they began their discussion that any information about when Mr. Lee learned of the nonconformity, legally does not keep him from getting a variance. Brief discussion was held.

Board Member Charles Gisler made a motion to grant the variance as outlined by staff; Board Member Stephanie Strickland seconded.

Attorney Sneed reminded the board that the motion needed to indicate that the four areas required for the variance were met.

Board Member Gisler amended his original motion to read as follows:

Motion to grant the variance to Chapter 13.5.2.C Nonconforming Uses and Structures, Discontinuance of one year at 196 East Street, PIN 8615-46-1571, based on the following findings: 1) an unnecessary hardship would result from the strict application of the ordinance; 2) the hardship results from conditions that are particular to the property; 3) the hardship did not result from actions taken by the applicant or property owner; and 4) the applicant purchased the property as it is and is asking for consideration to use the property at the density for which it was originally

built and has functioned for many years. Board Member Stephanie Strickland seconded. The motion carried unanimously.

2. Variance request to Chapter 2.4.2 (4e), Rear Setback at 1570 South Main Street, PIN 8605-80-9608

Chairman Ensley explained that before the opening of this proceeding, he wished to disclose a familial relationship with the applicant. By such disclosure, the Board and public were made aware that one of the applicant's parents is a second cousin. Chairman Ensley did not have any business interest in this issue, no financial interest in the outcome and indicated willingness for the Board to question him about any ethical considerations. Chairman Ensley indicated that he could make a reasonable decision based on the facts. The Board agreed by consensus.

Chairman Ensley called the hearing to order at 6:04 p.m.

Ms. Teague explained that the request is for a variance to the 20' rear setback requirement to accommodate the expansion of a building. She noted that there are two addresses noted in the Haywood County Land Records for this property – 465 Riverbend Street and 1570 South Main Street.

Ms. Teague noted that the property consists of 0.9053 acres that front South Main Street on a corner lot to Riverbend Street. The owners would like to add an additional 2,750.7 square feet to an existing one story metal building at the rear of the lot. The existing building is within the 20' setback required by the South Main Street Business District and approximately 11' from the boundary line, tapering to approximately 9' toward the street. To expand the building would increase the nonconformity. However to offset the building expansion to comply with the setback would interfere with an existing driveway and parking area that is used for delivery trucks. If the building were moved forward, it would impede the driveway.

Ms. Teague introduced information that was received on the afternoon of the meeting (May 18) from the applicant's representing architectural firm and information arguing this is an accessory structure to the principal building. As an accessory structure, the setback would be reduced from 20' to 5' feet per the ordinance. Ms. Teague requested that the Board clarify whether or not they considered this addition to be an accessory structure or if it was indeed a primary structure. She continued by calling attention to the submitted site plan as well as the aerial views of the property and explained that the two buildings would form an "L" shape and that the new addition would have a smaller footprint.

Ms. Teague provided the definition of an accessory structure from Chapter 17.4 of the Code of Ordinances as:

Accessory Structure. A detached subordinate structure(s), the use of which is clearly incidental to and customarily found in connection with a principal building or use, is subordinate to and serves a principal building or use and is subordinate in area, extent and purpose to the principal building or principal use served. This term includes "accessory buildings."

Ms. Teague further noted that from the drawings provided, that the applicant's property abuts a residential property and a 10 foot setback is required. She continued by explaining that if the Board finds that this is an accessory structure, staff will work with the applicant to ensure a buffer of 10 feet

in order to expand the building. The applicant has already agreed in principle to do this in conjunction with town staff.

Board Member Kidder inquired if there would be buffering requirements. Ms. Teague answered that the type C buffering that is required between zoning districts would be enforced.

Board Member Gisler inquired if the property had been surveyed? He indicated that the information provided looked like an old plat, as it did not have all of the call outs as newer plats. Board Member Gisler asked how the Board could make a decision about this without a formal survey. Ms. Teague added that when the application was accepted staff indicated that a survey would be necessary.

Board Member Kidder asked if the new standards apply for the expansion since the original building was grandfathered in. Ms. Teague responding noting that until a decision about whether or not this is an accessory structure is made, there is question about the required setbacks, but that the newer structure would have to adhere to new codes including buffer, and site triangle provision. Also, in the building design standards there is a provision for some metal buildings and façade requirements.

Attorney Sneed explained that if the Board grants the variance, conditions of the variance can be added and the Town will apply them. He reminded the Board that they would be granting the variance on the set back not the buffering.

Additional discussion was held related to the setback and buffer parameters for an accessory versus a principal structure and Ms. Teague requested feedback from the Board related to their interpretation of what this building would be.

Attorney Sneed interjected and reminded the Board that the burden is on the applicant to provide information about the structure and that the application and the materials received today from the architectural firm to should support the type of structure. He added that if the interpretation question is the primary consideration at this time, that question/discussion topic was not what was noticed for this public hearing.

Attorney Sneed's recommendation was to continue the public hearing to the next meeting and allow the staff time to determine whether the structure is or is not an accessory structure. If the applicant feels that the staff has erred in their determination, an appeal to reverse the staff recommendation can be brought forth to this Board as is the existing procedure and would be appropriately noticed, as required.

Board Member Henry Kidder made a motion to continue the hearing regarding the variance request to Chapter 2.4.2 (4e), Rear Setback at 1570 South Main Street, PIN 8605-80-9608 on Tuesday, June 7, 2016 at 5:30 p.m. in the Municipal Building Conference Room located at 16 South Main Street, Waynesville. Board Member Charles Gisler seconded the motion. The motion carried unanimously.

Chairman Ensley recessed the hearing at 6:41 p.m. for continuance on June 7, 2016.

C. ADJOURN

With no further business, Board Member Jack Suddath made a motion, seconded by Board Member Henry Kidder to adjourn at 6:43p.m. The motion carried unanimously.

Neal Ensley, Chairman

Amanda W. Owens, Town Clerk